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July 19, 2005

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Federal Communications Commission:
Office of Secretary

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Secretary
Federal Communications Commission
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Re: **INFORMAL OPPOSITION TO PETITION FOR
RECONSIDERATION OR CLARIFICATION** respecting
MM Docket No. 98-155

Dear Mrs. Dortch:

Transmitted herewith, on behalf of **OKAN COMMUNITY RADIO**, is an original and nine (9) copies of its **INFORMAL OPPOSITION TO PETITION FOR RECONSIDERATION OR CLARIFICATION**, pertaining to the above-referenced docket and the **PETITION FOR RECONSIDERATION OR CLARIFICATION** filed by **CLASSIC COMMUNICATIONS, INC.**

Should further information be desired in connection with this matter, kindly communicate directly with this office.

Very truly yours,


Lee W. Shubert

Enclosures (10)

cc(w/1 enc.): As Per the Certificate of Service

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In The Matter Of

Amendment of Section 73.202(b)
Table of Allotments,
FM Broadcast Stations

MM Docket No. 98-155
RM-9082
RM-9133

Federal Communications Commission
Office of Secretary

(Alva, Mooreland, Tishomingo, Tuttle
and Woodward, Oklahoma)

Filed with: Office of the Secretary

To: The Commission

**INFORMAL OPPOSITION TO
PETITION FOR RECONSIDERATION OR CLARIFICATION**

OKAN COMMUNITY RADIO ("OKAN"), by its attorneys and pursuant to Section 1.41 of the Commission's Rules, hereby requests that the Commission deny or dismiss the Petition for Reconsideration or Clarification ("*Petition*") filed by **CLASSIC COMMUNICATIONS, INC. ("Classic")** on April 13, 2005, in connection with the above-captioned proceeding. In support thereof, the following is respectfully submitted:

I. Discussion

A. **Background.** This Matter involves the allotment of Channel 259 and has a substantial procedural history. Pursuant to a *Memorandum Opinion and Order*, 17 FCC Rcd 14722 (Audio Division 2002) ("*2002 Order*"), the FM Table of Allotments was

first amended in order to re-allot Channel 259C3 from Tishomingo to Tuttle, Oklahoma. As a result of that Order, Classic, as licensee of Station KWFX(FM), Woodward, Oklahoma (FCC Facility ID No. 22823), was directed to change frequencies and migrate to FM Channel 292C1 in lieu of its then existing Channel 261C1^{1/} at Woodward, Oklahoma.

Subsequently, this year, the Commission set aside the staff action re-alloting Channel 259C3 to Tuttle, Oklahoma. *Memorandum Opinion and Order*, FCC 05-64 (2005) (“2005 Order”). Classic now seeks reconsideration, presumably of the 2002 Order. The grounds are that, since the changes to the Woodward allotments were as a result of the re-allotment from Tishomingo to Tuttle, and that allotment now has been reversed by the Commission’s 2005 Order, the changes to the FM Table that were precipitated by the 2002 Order should be re-amended and undone.

B. *Interest of OKAN*. OKAN is a new petitioner that is seeking to amend the FM Table of Allotments (Section 73.202(b)) to provide, among other proposals, for the allotment of Channel 259 to Tuttle, Oklahoma.^{2/} The Commission’s 2005 Order determined that while an allotment to Tuttle may have been appropriate, it was necessary to rescind the allotment due to a lack of a continued expression of interest.

^{1/} Classic’s construction permit, specifying Channel 292C1, was granted by the Commission on May 22, 2003. (Petition, p. 2.)

^{2/} On May 9, 2005, OKAN submitted a petition for rule making proposing the allotment of FM Channel 259C to Sedan, Kansas, as well as to Tuttle, Oklahoma.

Moreover, the 2005 Order recognized that it now would be possible for interested parties (such as OKAN) to petition for channel allotments that otherwise may have been precluded by, or are in harmony with, the allotment of Channel 259C3 at Tuttle. The 2005 Order established an effective date of May 9, 2005 – accepting only those rulemaking proposals filed as of this date and thereafter. In accordance with this provision, OKAN properly filed its Petition for Rulemaking on May 9, 2005.

C. *Analysis.* The 2005 Order is a narrowly construed finding that should be interpreted only upon its plain language. The 2005 Order specifically set aside the reallocation of Channel 259C3 to Tuttle because there was no continuing expression of interest in the Tuttle facility. It did not directly address any other issues. Thus, the Commission found that in the absence of a continuing expression of interest in the allotment proposal, Channel 259C3 should revert back to Tishomingo.^{3/} The Commission further recognized that the restoration of the Tishomingo allotment would allow for interested parties (such as OKAN) to propose new rulemakings involving any of the subject channels. Moreover, in order to ensure fairness, an effective date of May 9, 2005 was established. The 2005 Order clearly states that the Commission “will dismiss any such applications and proposals filed prior to May 9, 2005.”^{4/}

^{3/} Ralph Tyler was the original petitioner for the FM Channel allotment at Tuttle, Oklahoma. As the result of an Enforcement Bureau proceeding involving Mr. Tyler, all pleadings that he had on file at the Commission, including the Tuttle, Oklahoma, pleadings were dismissed. Accordingly, the expression of interest asserted by Mr. Tyler was eradicated.

^{4/} 2005 Order, p. 2, ¶ 6.

Classic's "Petition For Reconsideration or Clarification" should be more appropriately classified as a Petition for Rulemaking because (1) the filing fails to state with specificity what it is Petitioner is asking the Commission to reconsider, and (2) includes as its prayer for relief, a request that the FM Table of Allotments be amended.^{5/} In consideration of the express language of the 2005 Order, Classic's ersatz "Petition for Rulemaking," accordingly, should be dismissed because it was filed on April 13, 2005, more than three (3) weeks prior to the effective date established by the 2005 Order. Should the Petition be permitted, it will afford Classic an unfair advantage, thus violating the very purpose the Commission set out to achieve when it established the May 9, 2005, effective date.

II. Conclusion

The Commission's purpose in establishing the May 9, 2005 effective date in its 2005 Order would be effectively circumvented if Classic was permitted to pursue what is essentially a Rulemaking Petition under the guise of a "Petition for Reconsideration or Clarification." Classic's request to amend the FM Table of Allotments clearly violates the express effective date stipulated by the Commission in its 2005 Order and

^{5/} Even if the Commission were to find that Classic's filing properly constitutes a Petition For Reconsideration or Clarification, 47 CFR § 1.106(f) (2004) requires that such petitions be filed "within 30 days from the date of public notice of the final Commission action" In his case, the final Commission action upon which Classic requests Reconsideration is the 2002 Order, released on August 2, 2002. Therefore, the Commission should bar the Petition for Reconsideration on grounds that it is procedurally deficient under 47 CFR § 1.106(f). Classic's proper remedy would have been to file a rule making petition on or after May 9, 2005.

should therefore be dismissed. Absent dismissal, OKAN and any other party filing on or after May 9, 2005, would be adversely affected and penalized for abiding by the rules as set forth by the Commission in the 2005 Order.

WHEREFORE, the premises considered, OKAN respectfully requests that the Commission deny the Petition for Reconsideration or Clarification.

Respectfully submitted,

OKAN COMMUNITY RADIO

By: 

Lee W. Shubert
Its Attorneys

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July 19, 2005

CERTIFICATE OF SERVICE

The undersigned, an employee of **KATTEN MUCHIN ROSENMAN LLP** hereby certifies that the foregoing **INFORMAL OPPOSITION TO PETITION FOR RECONSIDERATION OR CLARIFICATION**, was mailed this date by First Class U.S. Mail, postage prepaid, and/or served electronically via e-mail to the following:

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Dolly M. La Fuente

July 19, 2005

* Service via U.S. Postal Service.

† Service electronically, via e-mail only.

INFORMAL OPPOSITION TO PETITION FOR RECONSIDERATION OR CLARIFICATION

**CERTIFICATE OF
SERVICE**